

**ATTORNEY DOCKET NO. 14114.0342U2
SERIAL NO. 10/031,088**

molecules of the amino acid glutamine (Q) at the carboxyl end of the peptide" (emphasis added). Importantly, as the specification recites that the synthetic peptides include antigenic peptides and further include glutamine at the carboxyl terminus of the synthetic peptide, it is clear that sequences already present in the HAV polypeptide that terminate with glutamine at the carboxyl end of the polypeptide are not a part of the claimed invention. The new claims added herein more clearly recite the invention as described above. No new matter is believed added.

In consideration of the prior pending claims, the Office Action requires restriction to one of the following 88 groups.

Groups 1-10 corresponding to claims 1-5 and 33-43 as described in the office action as selected from SEQ ID NOS:1-10.

Groups 11-22 corresponding to claims 1, 2, 6-8 and 33-43 as described in the office action as selected from SEQ ID NOS:11-22.

Groups 23-38 corresponding to claims 1-2, 9-11, 33-37, 39-40 and 42-43 as described in the office action as corresponding to SEQ ID NOS:23-38.

Groups 39-48 corresponding to claims 1-2, 12-14 and 33-43 as described in the office action as corresponding to SEQ ID NOS:39-48.

Group 49 corresponding to claims 1-2, 15-17, 33-37, 39-40 and 42-43 as described in the office action as corresponding to SEQ ID NO:49.

Groups 50-61 corresponding to claims 1-2, 18-20, 33-37, 39-40 and 42-43 as described in the office action as corresponding to SEQ ID NOS:50-61.

Groups 62-65 corresponding to claims 1-2, 21-23, 33-37, 39-40 and 42-43 as described in the office action as corresponding to SEQ ID NOS:62-65.

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Group 66 corresponding to claims 1-2, 27-29 and 33-43 as described in the office action as corresponding to SEQ ID NO:66.

Groups 67-72 corresponding to claims 1-2, 27-29 and 33-43 as described in the office action as corresponding to SEQ ID NOS:67-72.

Groups 73-88 corresponding to claims 1-2 and 30-43 as described in the office action as corresponding to SEQ ID NOS:73-88.

In response, Applicants submit that the new claims that more clearly recite the invention render the present restriction requirement moot. As in contrast to the Examiner's assertion that the inventions listed as Groups 1-88 do not relate to a single general inventive concept under PCT Rule 13.1, because, under PCT Rule 13.2, they lack the same or corresponding special technical feature, new claims 44-47 do recite the same special technical feature. Specifically, the newly added claims recite a peptide comprising an antigenic epitope and a further non-native carboxy terminal glutamine. The non-native glutamine residue provides for an increase in antigenic/immunological reactivity that was not suggested in the art. Therefore, this concept is inventive. Correspondingly, Applicants submit that each of new claims 44-47 relate to a single general inventive concept and request their examination as a single group as is proper.

Furthermore, even if the Examiner disagrees that the new claims are related by a single general inventive concept, Applicants request that the restriction requirement be not be applied to the new claims because the Examiner has not shown that a serious burden would result if all of the claims are examined together. M.P.E.P. § 803 provides that "[i]f the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."

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(*Emphasis added.*) Thus, for a restriction requirement to be proper, the Examiner must satisfy the following two criteria: (1) the existence of independent and distinct inventions (35 U.S.C. § 121) and (2) the search and examination of the entire application cannot be made without serious burden. See M.P.E.P. § 803. The Examiner has not shown that the *second* requirement has been met.

Still further, Applicants would note to the Examiner that the "10 sequence rule" is applicable to amino acid sequences (as noted in M.P.E.P. § 803.04 "...except for exceptional cases where the complex nature of the claimed material, for example a protein amino acid sequence reciting three dimensional folds..." where "...the reasonable number of sequences to be selected be less than ten."). As the present case does not rise to the type of case characterized in the M.P.E.P. as "exceptional," Applicants submit that at least ten sequences are appropriate to be examined *even if* each sequence were properly considered a separate species. If this were to be the determination of the Examiner, Applicants would provisionally elect claims 44-47 as drawn to SEQ ID NOS:39-45, 47, and 49.

Finally, if the Examiner persists in requiring restriction to a single sequence, Applicants provisionally elect claims 44-47 as drawn to SEQ ID NO:49

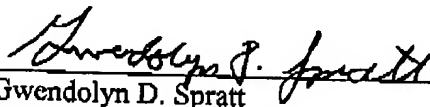
In light of the response to the restriction requirement and the newly added claims presented in the response, Applicants respectfully request consideration of this application and allowance of the elected pending claims.

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Enclosed is Credit Card Payment Form PTO-2038 authorizing payment in the amount of \$248.00 for 1) a Request for an Extension of Time fee to extend the period for reply by one month to March 31, 2003 (\$110.00); 2) one (1) new independent claim (\$84.00); and 3) three (3) new dependent claims (\$54). It is believed that no additional fees are due; however, the Commissioner is hereby authorized to charge any deficiency or to credit any overpayment to Deposit Account No.14-0629.

Respectfully submitted,

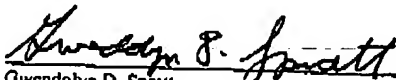
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CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. 1.8

I hereby certify that this correspondence is being transmitted via facsimile no. 703-872-9306 to: Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450, ATTN: Examiner Donna C. Wortman, on the date shown below.


Gwendolyn D. Spratt

3-31-03
Date